

**STATE OF SOUTH CAROLINA
CAUSE OF ACTION OF DILLON**

Guess Farm Equipment Company, Inc., d/b/a
Guess Irrigation Company,

*Plaintiff/Third-Party Plaintiff/Cause of
actioner-Defendant*

v.

Justice Family Farms, LLC, Catfish Bay,
LLC, and Carter Bank & Trust,

Defendants/Cause of actioner-Plaintiffs,

v.

Valmont Industries, Inc.

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

C/A #2011-CP-17-00413

ORDER

FILED
GWEN T. HYATT
2015 SEP - 8 AM 10:27
CLERK OF COURT
DILLON COUNTY

On August 17, 2015, Guess Farm Equipment Co., Inc. d/b/a Guess Irrigation Company ("Guess"), Justice Family Farms, LLC ("Justice"), and Catfish Bay LLC ("Catfish") (Justice and Catfish being collectively referred to as "Defendants") appeared before the Court for a hearing on certain pending motions, as set forth below in more detail. Based upon rulings issued by the Court during the hearing and during a subsequent telephone conference on August 19, 2015, the Court hereby ORDERS as follows as to these motions:

1. Cause of Action One of Guess' Complaint is for Foreclosure of Mechanic's Lien. Defendants filed a motion for summary judgment seeking to dismiss this cause of action. Guess filed a motion for summary judgment seeking a ruling that the mechanic's lien itself is valid, subject to proof of the underlying amount. For reasons stated on the record at the hearing, the Court **DENIES** Defendants' motion for summary judgment, and, for the reasons set forth in

Guess' memorandum in support and any additional grounds stated by the Court in its ruling from the bench, **GRANTS** Guess' motion for summary judgment to the following extent: Guess will not be required at trial to prove any of the issues related to whether there is a valid lien on the Catfish Bay property but will have to prove entitlement to the underlying amount and to any attorney's fees. The Court specifically finds that (1) Guess performed or furnished labor and materials actually used in the erection, alteration, or repair of a building or structure upon real estate by virtue of an agreement with, or by the consent of, the owner of the building or structure, or a person having authority from, or rightfully acting for, the owner in procuring or furnishing the labor or materials, and (2) that Guess' lien was timely and properly noticed, filed, served, and perfected against all Defendants. I find that Guess is thus entitled to a mechanic's lien under S. C. Code § 29-5-10. I further find that if there were any grounds to object to the validity of Guess' mechanic's lien, the Defendants waived those defenses per the terms of a Consent Order dated June 27, 2012, entered by the Honorable Brooks P. Goldsmith.

2. Guess moved for summary judgment on its Cause of Action Two for breach of contract, seeking judgement as a matter of law in its favor. That motion is **DENIED** for the reasons stated on the record, and for the reasons set forth in the memorandum of Justice in opposition. There is a genuine issue of material fact as to this cause of action.

3. Justice moved for summary judgment on Cause of Action Seven of Guess' Complaint for Abuse of Process. Justice's motion on this cause of action is **GRANTED** for the reasons set forth in the memorandum in support filed by Justice. On the material issues, there are no genuine issues of fact. Taking all of the evidence presented by Guess in opposition to Justice's motion in a light most favorable to Guess, it is not sufficient to support a claim for abuse of process under South Carolina law. There is no evidence that Justice's filing of the

lawsuit in West Virginia had the sufficient ulterior motive or willful nature required to qualify as an abuse of process. At most, any such motive or nature was of an incidental and collateral nature and not sufficient for a jury to determine that there was an abuse of process. The fact that Justice filed the suit in West Virginia to potentially gain a more favorable venue and that it was subsequently dismissed on lack of personal jurisdiction grounds is insufficient to create a triable issue of fact. That there were settlement demands made by Justice while the West Virginia case was pending, and that Guess did not accept those demands, is likewise not sufficient.

4. Justice moved for summary judgment on Cause of Action Eight of Guess' Complaint for Violation of the South Carolina Unfair Trade Practices Act. Justice's motion on this cause of action is **GRANTED** for the reasons set forth in the memorandum in support filed by Justice. On the material issues, there are no genuine issues of fact. At most, the evidence supports a dispute arising between Justice and Guess over a breach of contract. Construing Guess' evidence in a light most favorable to it, at most this would amount to an intentional breach of contract. Under South Carolina law, that is insufficient to qualify as a violation of the Unfair Trade Practices Act.

5. Justice moved for summary judgment on Cause of Action Nine of Guess' Complaint for Breach of the Implied Covenant of Good Faith and Fair Dealing. By agreement, this cause of action is dismissed and is to now be considered part of Guess' Cause of Action Two for Breach of Contract. Further, any claim for punitive damages by Guess under Cause of Action Nine (and to the extent now a part of Cause of Action Two) is dismissed, as there is no allegation nor evidence of the fraud necessary to support such a claim within the context of this breach of contract dispute.

6. Justice moved to dismiss Cause of Action Ten of Guess' Complaint for Recovery of Fees and Costs under S.C. Code § 27-1-15. The motion on this cause of action is **DENIED** because there are genuine issues of material fact, including whether there was a reasonable and fair investigation conducted by Justice.

7. Guess moved for summary judgment as to the three causes of action within Justice's counterclaim for Breach of Contract (Counterclaim Cause of Action One), Negligence (Counterclaim Cause of Action Two), and Breach of Warranty (Counterclaim Cause of Action Three). Included within these was a motion by Guess for summary judgment as to Justice's crop loss damages. For the reasons set forth in the memorandum of Justice in opposition to Guess' motions, Guess' motions as to each of these causes of action and as to Justice's damages are **DENIED** as there are genuine issues of material fact as to each of them.

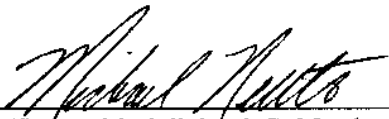
8. Justice filed a Motion to Trifurcate the trial of this matter. Guess had agreed that, to the extent there were any punitive damages claims, it should be bifurcated to that extent only under South Carolina law. Based upon the Court's rulings herein, no claims for punitive damages remain and thus bifurcation for that reason is not necessary and is **MOOT**.

In determining whether bifurcation of the remaining claims is appropriate, the Court considers that the following remain: Guess: Cause of Action One, Foreclosure of Mechanic's Lien; Cause of Action Two, Breach of Contract; Cause of Action Three, Quantum Meruit; and Cause of Action Ten, Recovery of Fees and Costs; and Justice: Counterclaim Cause of Action One, Breach of Contract; Counterclaim Cause of Action Two, Negligence; and Counterclaim Cause of Action Three, Breach of Warranty. All of the remaining cause of actions substantially relate to the irrigation system at issue, and present overlap of factual and legal issues.

Accordingly, the court exercises its discretion under Rule 42 and **DENIES** Justice's Motion to Trifurcate based upon the nature and relationship of the remaining cause of actions.

9. Guess had moved to compel certain discovery responses from Justice regarding the net worth of Justice and the identification of disputes that Justice had outside of the state of South Carolina. At the hearing, the Court had granted the motion. Now, however, based upon the other rulings herein, the pending motion to compel is **DENIED**, as further discovery on those issues would not likely lead to the discovery of admissible evidence (as the unfair trade practices cause of action and the punitive damages cause of action have been dismissed from the case).

IT IS SO ORDERED.



The Honorable Michael G. Nettles
Presiding Judge, Fourth Judicial Circuit

Sept 2, 2015
Beaufort, South Carolina

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September 4, 2015

•Certified Mediator/Arbitrator
+Also Admitted District of Columbia

The Honorable Gwen T. Hyatt
Dillon County Clerk of Court
P. O. Box 1220
Dillon, SC 29536-1220

RE: Guess Farm Equipment Company, Inc. vs. Justice Family Farms, LLC, Carter Bank & Trust - Guess Farm Equipment Company, Inc. vs. Valmont Industries, Inc., d/b/a Valmont Irrigation a/k/a Valley Irrigation
C/A No.: 2011-CP-17-00413
AB File No.: 30560

FILED
GWENT. HYATT
2015 SEP - 8 - 10:26
CLERK OF COURT
DILLON COUNTY

Dear Ms. Hyatt:

In connection with the above-referenced matter, please find enclosed herewith an original and two copies of an **ORDER** regarding the August 17, 2015 motions hearing before Judge Nettles. Please file the original order, clock in the copies, and return the clocked copies to me in the enclosed envelope provided for your convenience. Upon receipt of the clocked copies, I will serve a copy of the above order upon all counsel of record.

As always, thank you for your assistance and corporation. Should you have any questions or require anything further, please do not hesitate to contact me.

With kind regards,

Yours very truly,



SAMUEL F. ARTHUR, III

SFAIII/twd
Enclosures

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September 4, 2015

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